that certain material-men were unpaid. The money due the contractor the court applied on the note in preference to the material-men's charges. *Perry* v. *Parrott*, 67 Pac. Rep. 144. Here the dummy held the legal power over the contract claim. Since that claim was originally mortgaged subject to the material-men's incumbrance, their equity was superior to the payee's and necessarily antedated that asserted by the indorsee. No reason for distinguishing the subjective merits of the claimants suggests itself, and, the security aside, the principal claims were of equal substantial validity. The prior equity should have prevailed, and, on similar facts, such was the express decision in *Linville* v. *Savage*, 58 Mo. 248. Only two other cases have been found directly in point. *Mott* v. *Clark*, 9 Pa. St. 399; *Van Burkleo* v. *Southwestern Mfg. Co.*, 39 S. W. Rep. 1085 (Tex.). They support the principal decision, not considering the fundamental equity rule and apparently over-generalizing the exceptions to that rule as defined above.

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DEVOLUTION OF REAL PROPERTY OF A DISSOLVED CORPORATION. — An interesting question is presented by a recent decision of the Texas Supreme Court. A Louisiana corporation owned land in Texas. Though owing no debts it was dissolved by the voluntary act of the stockholders, three of whom were appointed commissioners to settle the corporate affairs. These three brought an action of trespass in Texas to try title to the land belonging to the corporation. It was held that though their appointment was not evidenced by such an instrument as was required for the conveyance of land in Texas, yet they could maintain the action in their character as stockholders, since on the dissolution of the corporation the title passed to the stockholders as tenants in common. *Baldwin* v. *Johnson*, 65 S. W. Rep. 171.

The common law rule has been generally stated to be that land of a dissolved corporation reverts to the grantor. 2 MOR., CORP., § 1031. A reference to the history of the law and to the only decided case on the point shows, however, that if the stockholders cannot claim, the property escheats, instead of reverting to the grantor. GRAY, PERP., §§ 44–51; *Johnson* v. *Norway*, Winch 37. Personal property, according to the generally stated common law rule, also goes to the sovereign as *bona vacantia*. *In re Higginson and Dean*, [1899] 1 Q. B. 325. These questions, however, have rarely arisen for decision, and no American case squarely in point has been found. Texas like many other states has a statute providing that if a person dies without heirs the property shall escheat to the state. Construing this statute, together with the statutes as to descent and those expressly providing for the appointment of receivers and trustees for dissolved Texas corporations, it seems clear that it was only meant to apply to natural persons. The solution of the question to whom the property of the dissolved corporation should go depends, therefore, upon common law principles. And this is true even though the statute applies to artificial persons; for if the stockholders can be held to succeed to the corporate property, the statute obviously has no application.

The American courts have been very alert in imposing a trust on the property of dissolved corporations for the benefit of creditors and shareholders. *Bacon* v. *Robertson*, 18 How. 480. Such a trust, while working

justice where a receiver holds the property, would be unenforceable against the state, even assuming that the state would not take free from equities in such cases. See 12 HARV. L. REV. 558. In the case of a foreign corporation like the present, however, where no one has been appointed who can hold the legal title, justice can only be meted out by giving the property to the stockholders.

Whatever the common law doctrine may be, it had its origin in days of municipal and ecclesiastical corporations, when modern business corporations with stockholders were unknown. The rule has often been called both obsolete and odious. ANG. & A., CORP., 779 a. Considering, therefore, that the doctrine has never been affirmed in America, that it is wholly inapplicable to modern conditions, and that it has been doubted by almost every American text-writer, it seems not going too far to adopt a more liberal and just rule in its place. In a note to *In re Higginson and Dean* it is said, "The dissolved corporation was merely a legal name for the members of whom it consisted. The debts due to the corporation were therefore in substance, though not in form, debts due to these members. On the corporation being dissolved these debts may be considered to be in reality and in conscience the property of the persons who then constituted the corporation. But this natural justice cannot be expressed in any known terms of law or equity." 15 L. QUART. REV. 115. In other words, if the property goes to the state a mere technicality is to stand in the way of the rights of the stockholders, and this technicality is to be strictly applied in a branch of the law, which is full of anomalies, and which is constantly being moulded to meet new conditions. Modern corporate existence would be impossible without stockholders; the capital is furnished by them, and the property should "in reality and in conscience" belong to them when the corporation is dissolved, subject of course to the rights of creditors.

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# RECENT CASES.

BANKRUPTCY — AGREEMENT NOT TO PROSECUTE A DISPUTED CLAIM AS FRAUDULENT CONVEYANCE — TRUSTEE'S RIGHT TO THE CONSIDERATION. — An insolvent, who was contesting his father's will, agreed not to oppose the probate of the will, in consideration of the devisee's promise to convey part of the property to a daughter of the insolvent. The latter was afterwards adjudged a bankrupt. *Held*, that the daughter will be ordered to convey the property received by her to the trustee in bankruptcy. *Smith* v. *Patton*, 62 N. E. Rep. 794 (Ill., Sup. Ct.).

The statute of 13 Eliz. c. 5, concerning fraudulent conveyances, is in general merely declaratory of the common law, and the enumeration in the statute is by no means complete. BUMP, FRAUD. CONVEY., § 12. The principle would seem to include any sacrifice of an asset by which a debtor intentionally hinders any of his creditors in obtaining relief against the debtor's estate, under the circumstances which make an ordinary conveyance fraudulent. *Youngs* v. *Trustees of Public Schools*, 31 N. J. Eq. 290; see *Cadogan* v. *Kennett*, 2 Cowp. 432, 434. Moreover, where the consideration for the bankrupt's fraudulent act is the conveyance of property to a third person who is a volunteer, this property, since it is purchased by giving up a right in which the creditors had an interest, should be subject to a constructive trust for the creditors. *Whittlesey* v. *McMahon*, 10 Conn. 137; see *Coleman* v. *Cocke*, 6 Rand. (Va.) 618. In the principal case the bankrupt's agreement not to contest the will, being a defence to